In fact, the Commission's proposal is consistent with a proposal made by six of the Regional Bell Operating Companies and Bellcore in a recent rulemaking proceeding on confidentiality issues.[26] In those comments, which Ameritech hereby incorporates by reference, the Joint Parties urged the Commission to establish a nondisclosure policy for LECs willing to share cost support pursuant to a protective agreement. They also proposed simple, workable procedures for implementing this policy. Specifically, they proposed that LECs seeking to limit disclosure of confidential cost data to those who execute a protective agreement be required to file a notice with the Commission three days before their tariff filing in order to give interested parties the opportunity to execute the protective agreement and thereby secure prompt access to the cost data at issue. The notice would include a description of: (1) the tariff filing to be made; (2) the type of cost support information to be treated as confidential; and (3) such other information as may be necessary for parties to obtain access to the confidential information, including, for example, the address at which the information is housed. The Joint Parties also filed a model protective agreement for use in all tariff review proceedings, the use of which would avoid disputes over the terms of such agreements.

Ameritech urges the Commission to adopt these proposals, subject to the following cautionary note. While the option of limiting disclosure to those signing a protective agreement should diminish LECs' legitimate concerns with regard to disclosure of sensitive proprietary cost data, the Commission must also recognize that protective agreements are not a cure-

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26 Comments of Joint Parties, June 14, 1996, GC Docket No. 96-55.

all. Violations of protective agreements can be difficult to detect and prove. Damages can be even more difficult to prove. Therefore, it is imperative that the Commission: (1) adopt a nondisclosure agreement and procedures that minimize the risk of intentional or inadvertent violations of nondisclosure obligations; and (2) preserve the right of LECs to seek complete protection of cost data if circumstances warrant.

The best way to minimize the risk of intentional or inadvertent violations is to limit disclosure. The greater the number of persons who have access to the information and the greater the number of copies that are circulating, the greater the chance the information will find its way into the wrong hands. This principle is simple, but critical to the success of the Commission's proposal. The Model Protective Order submitted by the Joint Parties in GC Docket No. 96-55 would limit disclosure of protected information to: one in-house counsel, one outside counsel, one paralegal, one secretary, two in-house subject matter experts and one outside consultant for each party. It would require each person who receives access to protected information to sign an acknowledgment agreeing to be bound by the Protective Agreement. It would also limit the number of copies any party could have to three. These restrictions are critical, and Ameritech strongly urges the Commission to adopt the Model Protective Order as a standard nondisclosure agreement. At a minimum, if the Commission does not adopt the Model Protective Order, it should incorporate these elements into the standard protective agreement it prescribes.

The Commission must also recognize, however, that no protective agreement can guarantee the confidentiality of sensitive data. LECs must,

therefore, have the right to seek complete protection of cost data if circumstances warrant. In the event a LEC seeks to avail itself of this option, the tariff at issue should be allowed to go into effect on schedule if either: (1) the LEC demonstrates that confidentiality is warranted under Exemption 4 of the Freedom of Information Act and the Commission concludes that the tariff is not patently unlawful as to warrant rejection; or (2) the Commission finds that public access to the cost support is unnecessary to assist the Commission in the review of the tariff. Otherwise, suspension and investigation or rejection would be appropriate.

VI. Any Electronic Filing System Adopted by the Commission Should Accommodate Multiple Platforms and Software Packages

In order to facilitate tariff administration, the Commission proposes to require that carriers file tariff transmittals electronically in accordance with rules established in this proceeding. The Commission suggests that electronic filing would offer benefits to LECs, the Commission, the public at large, and state and other federal regulators. It seeks comment on several issues that are important to ensuring that an electronic filing system is implemented in a speedy, reliable, and cost-effective manner.

Ameritech believes that the key to a speedy and cost-effective implementation of electronic filing is choosing a system that accommodates multiple platforms and software packages. There are numerous platforms and software packages that are widely in use today, and neither a LEC nor a third party interested in filing comments in a Commission proceeding should have to purchase new computers and new software programs in order to make an FCC filing. Fortunately, there are products available that can

accommodate multiple platforms and software packages. For example, Adobe's Acrobat Exchange creates documents from both Macintosh and Windows by making use of portable document format. Adobe also makes available a free reader that supports Macintosh, Windows, DOS, and UNIX and that provides software needed to read or print the documentation filed. This program is, in fact, being seriously considered by all three Ameritech states that are in the process of implementing electronic filing systems.

As the Commission recognizes, another key feature of any electronic filing system is security. In this regard, the Commission must provide a platform with storage space for each filing entity that is proprietary and secure. In addition, the storage area should have space for both public and confidential information. Ameritech also agrees that both Internet and dial-up access should be possible so that there are diverse and redundant means of access.

The Commission proposes that transmittals be submitted in a specified database software program. Ameritech believes that a document management system would be preferable to a database system insofar as it would provide greater formatting flexibility. LEC transmittals are today filed in a wide variety of formats. A database system with specified records and fields would require the homogenization of all of these formats and the redrafting of all tariffs, which would be, potentially, a monumental undertaking. There is no reason to put LECs to that burden and expense. Instead, consistent with the Commission's stated goal of establishing a speedy and cost-effective electronic filing system, the Commission should use a document management system that would allow LECs to continue filing

their tariffs in the format in which they are today filed and which the LEC finds most suitable to describing the terms and conditions on which its services are available. Particularly, as carriers expand the range of services they offer in light of the 1996 Act, flexibility in formatting tariffs is critical.

The Commission asks who should have responsibility for administration of the system. Ameritech believes that it should be up to the Commission to administer the electronic filing system. In this regard, the Commission, not filing parties, should be responsible for software management, indexing, and other functions associated with operating the electronic filing system.

Finally, Ameritech urges that the Commission coordinate the various electronic filing initiatives being considered and implemented by various Bureaus throughout the Commission. The administration of such systems by the Commission and participation by carriers and members of the public at large would be far simpler if the Commission adopts standard, uniform procedures and requirements for all electronic filing of Commission documents.

VII. Pre-Effective Review

The Commission also seeks comment on what measures it should take to facilitate its review of tariffs within seven or fifteen days, assuming that the Commission continues to undertake pre-effective review of tariffs. First, the Commission proposes to construe the 7 or 15 day requirement as referring to calendar days, not work days or week days. The Commission also proposes to

require that LECs file more complete descriptions of their tariffs and identify, either through a label on the front of the tariff or a statement in the transmittal letter, whether the filing is a streamlined filing and whether it contains increases, decreases, or both. In addition, the Commission proposes that any petitions against a filing be filed within 3 calendar days after the date of the filing and hand-delivered, with replies due 2 calendar days after the petition. Petitions and replies would have to be hand-delivered to all affected parties. Alternatively, the Commission asks whether comment should be permitted only if a LEC tariff is suspended and investigated. In this regard, the Commission asks whether section 204(a)(3) establishes a right for interested persons to request suspension and investigation of tariffs.

Ameritech agrees that Congress meant calendar days when it specified that tariffs be effective on 7 or 15 days notice. This is the plain, ordinary meaning of the statute's language.

Ameritech questions the necessity for more detailed descriptions of tariff filings and additional labeling requirements. Nevertheless, provided that these additional requirements are not burdensome, Ameritech does not oppose them. For example, Ameritech does not oppose providing a description of how a filing changes previous tariff terms and conditions or flagging rate increases and decreases. Ameritech does, however, oppose the Commission's proposed requirement that LECs provide an analysis showing that their tariffs are lawful under current rules. This requirement would be inconsistent with section 204(a)(3)'s directive that LEC tariffs are deemed lawful. Insofar as these tariffs are deemed lawful, the burden of showing

unlawfulness is on opposing parties; it is not the legal duty of a LEC to prove that its tariff is lawful.

Ameritech supports the proposed notice periods for petitions against LEC tariff filings and replies to such petitions. These short period are appropriate and necessary in a streamlined regulatory regime.

VIII. Other Issues

(A) Annual Filing

Noting that annual access tariffs involve rate increases and decreases, the Commission states that such filings appear to be eligible for streamlined filing under section 204(a)(3). The Commission proposes, however, to require carriers to file a TRP prior to the filing of the annual tariff revisions. The Commission states that for price cap carriers, the TRP will involve an annual updating of the various price cap constraints on the LECs' prices, and only in the subsequent tariff filing would the actual prices be set forth. The Commission tentatively concludes that, insofar as the TRP would not include information regarding a LEC's tariffed rates, charges, classifications, or practices, it would not be subject to section 204(a)(3).

Ameritech supports this proposal with the understanding that a modified version of today's TRP would be filed prior to the annual filing. Specifically, Ameritech suggests that, fifteen days prior to the annual filing, price cap LECs file the following information for each price cap basket other than the common line basket: the Price Cap Index (PCI) form showing the

existing and proposed PCIs; a description and explanation of any exogenous cost adjustments being made; and proposed upper and lower bounds for the Service Band Indices. Pending access reform, price cap LECs cannot file this information for the common line basket prior to their annual filing because of the interrelationship between NECA's calculation of long-term support and exogenous cost adjustments. For price cap LECs and rate-of-return LECs, however, a full TRP would be filed at the time of the annual filing.

(B) Forbearance Authority

In paragraph 19 of the Notice, the Commission tentatively concludes that section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under section 10(a) of the Act to establish permissive or mandatory detariffing of LEC tariffs. This tentative conclusion is correct and should be adopted. Section 10(a) authorizes the Commission to forbear from applying "any regulation or any provision of this Act to a telecommunications carrier or service, or class of telecommunications carriers or telecommunications services . . ." The only limitation on this authority is contained in section 10(d), which limits the Commission's power to forbear from applying section 251(c) and 271. There are no limits on the Commission's authority to forbear from applying section 204 or the tariff filing requirements of section 203. Therefore, the Commission retains full authority to establish a detariffing policy for LECs.

(C) Investigations

Noting that section 204(a)(2)(A) of the Act requires it to conclude tariff investigations within five months after a tariff becomes effective, the Commission asks whether it should establish procedural rules to expedite the investigation process. The Commission solicits comment, specifically, on the use of abbreviated orders when a tariff is found lawful or pro forma Commission orders adopting Common Bureau findings. The Commission also seeks comment on procedures for informal mediation of tariff investigation issues.

Ameritech supports the use of abbreviated orders upholding tariffs or pro forma Commission orders. Such orders could save Commission time and resources. On the other hand, Ameritech does not believe that five months is so short a time period that more dramatic measures need be taken. In particular, mandatory informal mediation seems neither necessary nor compatible with the strong presumption of lawfulness accorded LEC tariffs under section 204(a)(3).

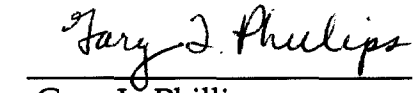
IX. Conclusion

As the Commission has recognized in virtually every proceeding it has initiated to implement the 1996 Act, the intent of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications

and information technologies and services to all Americans[.]"[27] This proceeding affords the Commission a direct opportunity to further this goal. By streamlining LEC tariff requirements as recommended above, the Commission would not only enable LECs to respond more quickly to the demands of the marketplace, thereby enhancing competition, but also encourage LECs to develop innovative new technologies and services.

At the same time, the Commission must begin the process of moving beyond the sixteen year-old *Competitive Carrier* regime. With the elimination of barriers to competition in local exchange and access services, that regime is no longer sustainable, and it no longer serves the interests of consumers. Through its asymmetric regulatory construct, it stifles competition, promotes abuse of the regulatory process, encourages inefficient entry, and is unfair to incumbent LECs. It should be replaced with a new regulatory regime that is better tailored to today's world and that treats all LECs equally.

Respectfully Submitted,



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27 See note 1, supra.